

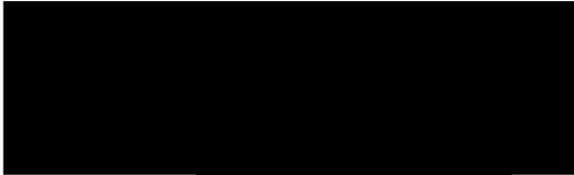
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



L2

FILE: [REDACTED]
MSC 02 227 61221

Office: LOS ANGELES

Date:

APR 16 2008

IN RE: Applicant:



APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that she entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since that date through May 4, 1988.

On appeal, applicant asserts that she submitted additional evidence in response to the Notice of Intent to Deny. Applicant contends that the director's decision denying her application does not clearly state that the evidence was reviewed and considered. Applicant states that she will submit additional evidence.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate

for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing entry into the United States before January 1, 1982, and continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In the Notice of Intent to Deny (NOID), dated October 8, 2004, the director stated that the applicant failed to establish her claimed entry into the United States before January 1, 1982, and continuous unlawful residence since that date through May 4, 1988. The director noted several discrepancies regarding the applicant's address of residence during the statutory period.

During the her September 21, 2004, interview, the applicant stated that she entered the United States for the first time in January 1981 and resided in San Clemente, California until 1992. However, in the applicant's Form I-687, Application for Status as a Temporary Resident, the applicant listed her first residence at [REDACTED], San Clemente, California, in May 1981. Also, the record includes affidavits by [REDACTED] and [REDACTED]. All of the affiants stated that the applicant resided at [REDACTED], San Clemente, California, from 1981 to 1986. The director noted that this address was not mentioned in the applicant's Form I-687.

In addition, the record includes several copies of receipts for registered mail in 1986, 1987 and 1988. All of the receipts, specifically one dated January 1986, indicate that the applicant resided at [REDACTED], San Clemente, California. This receipt contradicts the applicant's Form I-687, which indicates the applicant resided at [REDACTED] San Clemente, California from May 1981 to March 1986. All of the above discrepancies detracted from the credibility of the applicant's claim. The director granted the applicant thirty (30) days to submit a rebuttal or additional evidence.

In rebuttal to the NOID, the applicant attempted to resolve any discrepancies noted by the director. The applicant asserted that most of the discrepancies were the result of preparer error. The applicant stated that the affiants [REDACTED] and [REDACTED], did not know she came from Mexico and resided at [REDACTED] first. The applicant's statement seriously undermines the credibility of the affiants. In the Notice of Decision (NOD), dated November 12, 2004, the director determined that applicant's evidence failed to overcome the reasons for denial stated in the NOID. The director denied the instant application and determined that the applicant was ineligible for adjustment of status under LIFE Legalization.

On appeal, the applicant contends that the director's decision did not clearly state that the evidence submitted in response to the NOID was reviewed and considered. In support of the applicant's claim, the record contains the following additional relevant evidence:

1. An undated sworn affidavit by [REDACTED] who stated that the applicant worked in her home as a housekeeper since May 1981 to March 1986. The affiant stated that the address at the time was [REDACTED] San Clemente, California. The affiant stated that the applicant had two absences from the United States on December 1984 to January 1985, and on February 1986 to March 1986. The affiant provided her address of residence, a photocopy of her California Seller's Permit, and a photocopy of her business card. It is noted that the affidavit is inconsistent with the applicant's Form I-687, in which the applicant stated that she resided at [REDACTED] in May 1981. This discrepancy brings into question the credibility of the affiant.
2. An undated sworn affidavit by [REDACTED], who stated that she has known the applicant since January 1981. The affiant stated that she met the applicant through [REDACTED], whose house the applicant cleaned. The affiant stated that [REDACTED] worked for her mother as a nurse, as the affiant's mother owned a Board and Care Home. The affiant stated that the applicant would sometimes work for her mother as a housekeeper. The affiant stated that the applicant left the United States to have her first child in Mexico and returned around March 1986. The affiant's mother hired the applicant to work as a housekeeper in June 1986. The affiant stated that the applicant left the United States to visit her mother in Mexico in June 1987 and returned the same month. The affiant stated that her mother paid someone to transport the applicant to Tijuana. The affiant stated that her mother passed away in 1992. The affiant provided her address of residence, a photocopy of her California driver's license, a photocopy of her certified abstract of birth, and evidence of her mother's death. [REDACTED] claimed to have claimed to have personal knowledge of the applicant's residence in the United States since 1981 and provided specific details regarding the each of the applicant's absences from the United States. However, it is noted that the affiant failed to mention the applicant's first absence from the United States in December 1984 when the applicant returned to Mexico to get married. The record contains the applicant's marriage certificate which indicates she was married on December 26, 1984, in Mexico. This discrepancy deters from the credibility of the affiant.
3. An August 16, 2004, sworn affidavit by [REDACTED] who stated that she has known the applicant since the applicant was ten months old. The affiant stated that she was the applicant's godmother. The affiant stated that the applicant resided in the United States since January 1981 to the present. The affiant stated that the applicant had two children born in Mexico. The affiant stated that the applicant returned to Mexico in February 1986 to March 1986 with her newborn baby, and on June 3, 1987 to June 20, 1987 to visit her sick mother. The affiant provided her address of

residence and a photocopy of her certificate of naturalization. The affiant claimed to have personal knowledge of the applicant's residence in the United States since 1981 and provided specific details regarding the each of the applicant's absences from the United States. However, it is noted that the affiant failed to mention the applicant's first absence from the United States in December 1984 when the applicant returned to Mexico to get married. This discrepancy deters from the credibility of the affiant.

4. An August 18, 2004, sworn affidavit by [REDACTED], who stated that she has personal knowledge that the applicant, her niece, has resided in the United States since January 1981. The affiant stated that the applicant resided at [REDACTED] in San Clemente, California since May 1981. The affiant stated that the applicant went to Mexico in February 1986 and returned to the United States in March 1986, and was absent again on June 3, 1987 to June 20, 1987. The affiant provided a copy of her birth certificate, a photocopy of her brother's passport and birth certificate. It is noted that the affidavit is inconsistent with the applicant's Form I-687, in which the applicant stated that she resided at [REDACTED] in May 1981. It is further noted that the affiant failed to mention the applicant's first absence from the United States in December 1984 when the applicant returned to Mexico to get married. These discrepancies deters from the credibility of the affiant.
5. A September 16, 2004, sworn affidavit by [REDACTED], who stated that she has known the applicant since she was a teenager. The affiant stated that in January 1981 the applicant paid a man one hundred dollars for him to help her cross the border into the United States. The affiant stated that she attended the same church in Los Angeles as the applicant. The affiant stated that the applicant returned to Mexico in 1984 and married in December 1984. The affiant stated that the applicant returned in January 1985 by hiring someone to help her cross the border in Tijuana/San Isidro for another time. The affiant stated that the applicant lived in San Clemente and worked as a housekeeper. The affiant stated that the applicant returned to Mexico to have her first child in February 1986 and returned in March 1986. The affiant provided details regarding the applicant's return trip and crossing the border with the applicant's newborn child. The affiant stated that the applicant returned to Mexico in June 1987 because the applicant's mother was sick. The affiant stated that she lent the applicant a suitcase for the trip, which the applicant returned shortly after her return from Mexico two weeks later. The affiant provided her address of residence, telephone number, and photocopies of her certificate of naturalization and identification card.
6. A September 13, 2004, sworn affidavit by [REDACTED], who stated that she has known the applicant since she was young as the applicant went to junior high with the affiant's sisters. The affiant stated that the applicant crossed the border of San Isidro/Tijuana in January 1981. The affiant stated that the applicant visited her home, and commented that she was looking for a job. The affiant stated that the applicant was offered a job in San Clemente. The affiant stated that the applicant went to Mexico to visit her family and get married in December 1984. The affiant stated that

the applicant returned in January 1985. The affiant stated that the applicant returned to Mexico to give birth to her child and returned in March 1986. The affiant stated that the applicant went to Mexico in June 1987 because her mother was very ill and returned that same month. The affiant provided her address of residence, telephone number, and photocopies of her driver's license and certificate of naturalization.

7. A September 20, 2004, sworn affidavit by [REDACTED] who stated that the she has known the applicant since 1981. The affiant provided her address of residence, telephone number, certificate of naturalization number, registration number, and a photocopy of her driver's license. The affidavit of [REDACTED] provides minimal probative value. [REDACTED] failed to indicate how she dated her acquaintance with the applicant, how she met the applicant, how frequently she saw the applicant or where the applicant resided during the requisite period.
8. A July 27, 1992, letter by [REDACTED], who stated that the applicant worked for her from 1986 to 1990 as a housekeeper. The affiant provided her address of residence. The affidavit of [REDACTED] provides minimal probative value. The affidavit failed to include the applicant's residence at the time of employment, any detailed information about the employment, or any supporting documentation to substantiate the affiant's claim.

While the above evidence has been considered, the AAO finds that the applicant has failed to resolve the discrepancies in the record. Similar to previous affiants, the affidavits of [REDACTED] and Ms. [REDACTED] are inconsistent with the applicant's Form I-687. The applicant stated that she resided at [REDACTED] in May 1981; whereas [REDACTED] and [REDACTED] stated another address. All of the affiants, [REDACTED] and [REDACTED], claimed to have personal knowledge of the applicant's residence in the United States since 1981, but failed to mention the applicant's first absence from the United States in 1984 to get married in Mexico. These discrepancies cast doubt on the credibility of the affiants. The affidavits of [REDACTED] and [REDACTED] provide minimal probative value.

Although the applicant has submitted numerous affidavits in support of her application, the record contains numerous inconsistencies which have not been resolved. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the submitted affidavits perpetuate noted discrepancies and cast further doubt on the credibility of the applicant's claim.

The applicant has not provided sufficient credible, contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The discrepancies in the record seriously detract from the credibility of her claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its

credibility and amenability to verification. Given the applicant's reliance upon documents with discrepancies or minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

It is also noted that, on appeal, the applicant contends that the discrepancies in the record are the result of preparer error. Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The record does not include any of the above documentation. Therefore, the applicant's claim of ineffective assistance of counsel is unsupported.

Therefore, based on the above discussion, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, she is ineligible for permanent resident status under Section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.